

# UCIP CONFERENCE

SANDY, UT

Let's change  
our Conditional  
Use Chapters!

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## Session Goals

- Learn the State Law principles that have changed for Conditional Uses
- Highlight issues in a typical ordinance
- Consider language changes that need to be made
- Take home your marked up code!

LAND USE RE- ZONING	TIME	NOTICE TYPE
Preparation, Adoption or Amendment of the General Plan	Upon inception of the initial process to rezone a plan or the process for any comprehensive plan amendment	(A) notice of the date, time, and place of the first public hearing to consider the original adoption or any modification of all or any portion of a general plan and notice of each public meeting on the subject.
	10 days prior to first public hearing	(B) notice of a public hearing must be published in a newspaper of general circulation in the area and published on the Utah Public Notice Website online and posted in at least three public locations within the municipality or on the municipality's official website.
	3-24-hour notice of each public meeting	(C) notice of a public meeting must be published in a newspaper of general circulation in the area and published on the Utah Public Notice Website online and posted in at least three public locations within the municipality or on the municipality's official website.

## Conditional Uses – State Law

(1) A land use ordinance may include conditional uses and provisions for conditional uses that require **compliance with standards set forth in an applicable ordinance.**

(2) (a) A conditional use **SHALL be approved if reasonable conditions are proposed, or can be imposed, to mitigate the reasonably anticipated detrimental effects** of the proposed use in accordance with **applicable standards.**

(b) If the reasonably anticipated detrimental effects of a proposed conditional use cannot be substantially mitigated by the proposal or the imposition of reasonable conditions to achieve **compliance with applicable standards,** the conditional use **may** be denied.



## Conditional Uses Administrative Action

**It's rarely ever a no....**

- They **Shall** be approved, but.....
- Can be “mitigated” to lessen the impact on underlying/adjacent uses
- You must have criteria to support how you want those uses to develop. Standards for lighting, parking, noise, traffic, etc.
- Reducing the number of CU's should result in the need for more clear standards for your permitted uses (think Home occupations for example.....)



## Conditional Uses: Processing options

- Since they are “administrative” they no longer require public hearings
- Since they are “administrative”, they no longer require mail outs
- Staff can process (if they want to)
- Public clamor is not a part of these decisions (the uses belong there)

## What is a Conditional Use? Typical Definition versus State Law

- “Typical” - means a land use that, because of its unique characteristics or potential impact on OUR County, or surrounding neighbors, or adjacent land uses, or the environment, *but which may be suitable and desirable only in certain locations in that zoning district due to conditions and circumstances peculiar to that location and/or upon certain conditions which make the uses suitable and/or only if such uses are designed, laid out, and constructed on the proposed site in a particular manner.*
- State Law – if it is a listed use in the zone and it shall be approved if it can meet written standards. May need mitigation of anticipated detrimental effects.
  - *Principles: assumption of compatibility if listed in your zoning district, shall be approved except in the most extreme circumstances and still can be approved if detrimental effects are mitigated, not very discretionary (approvals based on standards in your ordinances),*
  - *Vague standards – “promote the health, safety, convenience, and general welfare of the present and future inhabitants of OUR County.”*

## Typical layout and content

### ■ Purpose

- Procedures
- Approval considerations
- Duration/Expiration/Revocation/Violations
- Amendments

### ■ Purpose

- *Necessary and desirable*
- *Compatible with the General Plan*
- *Harmonious with the neighborhood (safety)*
- *Proper integration*
- *Might be ok here but not there*
- *Consistent with the zoning district*

## Typical layout and content

### ■ Purpose

### ■ Procedures

- Approval considerations
- Duration/Expiration/Revocation/Violations
- Amendments

### ■ Procedures

- *Fill out an application*
- *Pay fees*
- *Public hearing with PC (A public hearing may be held when deemed by the Planning and Zoning Commission or County Council to be in the public interest.)*
- *Sometimes a hearing with the County Commission*

## Typical layout and content

- Purpose
- Procedures
- Approval considerations (Standards!)
- Duration/Expiration/Revocation/Violations
- Amendments
- *CONDITIONS RELATING TO SAFETY FOR PERSONS AND PROPERTY*
- *CONDITIONS RELATING TO HEALTH AND SANITATION.*
- *ENVIRONMENTAL CONCERNS.*
- *CONDITIONS RELATING TO COMPLIANCE WITH INTENT OF GENERAL PLAN AND CHARACTERISTICS OF VICINITY (OR NEIGHBORHOOD)*
- *CONDITIONS RELATING TO PERFORMANCE*
- *ENERGY CONSERVATION CONCERNS (?)*

## Typical layout and content

- Purpose
- Procedures
- Approval considerations
- Duration/Expiration/Revocation/Violations (not always covered!)
  - *Duration – as long as the owner is the owner*
  - *Expiration – usually a time period of 1 to 2 years if no activity or abandoned*
  - *Revocation/Violations – failure to follow the approval conditions*
- Amendments

## Denial sections

- How can a conditional use, a use allowed in the zone be denied?
- *Principles: vagueness, bonding for private improvements?, past performance?, doesn't meet the standards of the zone, complete applications (already should be required, can't walk away from a complete application)*
- Under circumstances of the particular case, the proposed use will be detrimental to **the health, safety or general welfare** of persons residing or working in the vicinity, or injurious to property or improvements in the OUR County and there is no practical means available to the applicant to effectively mitigate said detrimental effects.
- The applicant cannot or does not give the Planning Commission reasonable assurance that conditions imposed incident to issuance of a conditional use permit **will be complied with**.
- **Unsatisfactory past performance** such as: failure to comply with past permit conditions or current/past permit violations.
- Requested **conditional use is not permissible** under the provisions of this code.
- Failure to **complete all application requirements and/or pay all required fees**.

## Typical layout and content

- Purpose
- Procedures
- Approval considerations
- Duration/Expiration/Revocation/Violations
- **Amendments**
- Amendments **(not always covered!)**
  - *Covers how an applicant, after approval, usually in operation, can make site plan changes*
  - *Usually a percentage of the site or building*
  - *Usually a ZA responsibility*

## State Law upgrades - Purpose

- The purpose of this chapter is to provide for a reasonable application, review, and approval **process** for land uses that are specified as "conditional," such that proposed new land uses meet County ordinances, Federal and State Law, and are properly integrated into the community through the **imposition of conditions, based on standards, intended to mitigate, the reasonably anticipated detrimental effects of a particular conditional use.** Mitigate, as defined in State Law, means reduce, and does not mean eliminate. Conditional uses **shall be approved** on a case-by-case basis provided the applicant adequately demonstrates that the reasonably anticipated detrimental effects of the proposed use can be mitigated through the imposition of reasonable conditions, based on standards in the County ordinances. Uses designated as conditional uses **require approval by the planning commission, acting as the Land Use Authority.**

## State Law Upgrades - Process

- Establish who is responsible for review to assure completeness and to determine potential detrimental effects – ZA
- Compare to standards in the ordinances – we need written standards
- Pre-application, complete ap with fees, site visits, additional studies (if needed), staff report, agenda item, and PC hearing or meeting (no hearing required)
- Mail outs? (not required, all uses named in the ordinance should already be compatible within the zone) – maybe call this a “courtesy notice”
- PC decision based on **written standards!**

## State Law Upgrades - Approval Standards (not just considerations!)

- PC (if designated as the LUA) can impose conditions based on “written standards” to address the “detrimental effects”
- List as a minimum **all the standards** you can think of – maybe based on past decisions and reviewing your uses for what might be potential detrimental effects
- Typical lists include: street impacts (congestion, access, peds, bikes), utility availability and service capacities, environmental issues, light, hazards (slope related, etc.), site design (building location, hours, height, scale, transitions between uses, etc.), graffiti prevention, etc.

## State Law Upgrades – Duration, etc.

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|--|--|
| <ul style="list-style-type: none"> <li>■ Duration/Expiration/Revocation/Violations           <ul style="list-style-type: none"> <li>– <i>Runs with the land – can be transferred</i></li> <li>– <i>No work done within a time frame – define “work”</i></li> <li>– <i>Provide a means for extension of the approval</i></li> <li>– <i>Revoke or fine, if they don’t do what their approval requires</i></li> </ul> </li> </ul> | <ul style="list-style-type: none"> <li>■ Amendments           <ul style="list-style-type: none"> <li>– <i>Allow for minor changes – maybe 10% of the site or building</i></li> <li>– <i>Major changes go back to the PC</i></li> </ul> </li> <li>■ Temporary Conditional uses           <ul style="list-style-type: none"> <li>– <i>“yes” but need a section of your ordinances that defines them</i></li> </ul> </li> </ul> |
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## Use lists implications (you need to review these as part of your CU upgrade process!)

- All subdivisions are conditional?
- All manufactured home developments are conditional?
- All commercial and manufacturing uses are conditional?
- Group homes conditional?
- Any use with a negative connotation is conditional?
- *Can you really deny a use allowed in the zone just cause you don't like where it is located within the zone (what is the principle here)?*
- Ask – what are the conditions that you would add beyond the standards in the ordinances to a conditional use?

## Let's look at one of yours! Volunteer?



## Examples

- Millcreek
- Bluffdale
- Midvale
- Layton
- Your neighboring communities may not be up to date!
- Thank you!

